IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 5750 of 2004

Between:

B.Niranjan Prasad, s/o Sri B.Bhaskara Rao,
r/o C-31, Ushodaya Complex, Street No.19, Tarnaka,
Secunderabad.

..... PETITIONER

AND

1 The Andhra Pradesh Housing Board rep., by its Vice

Chairman, "Gruhakalpa", Mukharamjahi Road,
Hyderabad-500 001.
2 The Vice Chairman, The Andhra Pradesh Housing Board,
"Gruhakalpa", Mukharamjahi Road, Hyderabad-500 001.
3 The Executive Engineer (Housing), Office of the Executive

Engineer (Housing), South Division, A.P.Housing Board,

"Gruha Kalpa", Mukharamjahi Road, Hyderabad-500 001.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any writ, order or direction, particularly one in the nature of mandamus declaring the proceedings No.27/MIG/M.Ali/E12/EE(H)/03 dated 13-02-2004 of the respondents as arbitrary, discriminatory, illegal, and invalid for ignoring, neglecting and not considering my representations dated 1-8-2000, 26-11-2001, 27-10-2003 and 12-01-2004, and thus discriminating me from the other allottees of House Nos.22/MIG, 23/MIG, and 24/MIG who were directed by the respondents to pay Rs.425/- per square yard, while directing me to pay Rs.1700/- per sq.yard vide

proceedings No.27/MIG/M.Ali/E12/EE(H)/03 dated 13-02-2004 and also direct the respondents to consider my case also on par with the allottees of House Nos.22/MIG, 23/MIG and 24/MIG and register the House MIG/27 in my name

Counsel for the Petitioner: MR.S.J.RAO

Counsel for the Respondent Nos.1 to 3: MR.J.PRABHAKAR (SC FOR APHB)

The Court made the following:

ORDER:

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

This writ petition is filed seeking a declaration that the proceedings of the respondents dated 13-02-2004 whereunder the petitioner was directed to pay a sum of Rs.1,26,446/- towards the cost of the excess land at the rate of Rs.1700/- per square yard is arbitrary and illegal.

The petitioner states that he was allotted MIGH-27 *vide* sanction letter dated 28-03-1980 subject to the terms and conditions specified thereunder and thereafter as per the no objection certificate granted by the 1st respondent and in terms of the approved site plan, he constructed a compound wall around the plot allotted to him. It is further stated that as per the approved site plan the extent of the plot was shown as 374.39 square yards. However subsequently it was found that the plot consists of excess land of 74.39 square yards. The petitioner was willing to retain the excess land on payment of cost at the rate prevailing at the time of allotment and accordingly having paid all the instalments under the hire purchase scheme he requested the 1st respondent to get the house registered including the excess land of 74.38 square yards. He also gave his consent to pay the extra cost for the excess land at the rate as applicable at the time of allotment. The 1st respondent having received the representations of the petitioner dated 1-8-2000,26-11-2001, 27-10-2003 and 12-01-2004 kept quiet for a long time and strangely passed the impugned order dated 13-02-2004 directing him to pay a sum of Rs.1,26,446/- towards cost of excess land at the rate of Rs.1700/- per square yard.

The contention of the petitioner is that the respondents have accepted the payment in respect of the excess land at the rate of Rs.425/- per square yard from some of the similarly situated allottees and therefore the impugned order directing the petitioner to pay a sum of Rs.1700/- per square yard is arbitrary, illegal and discriminatory. Hence, the writ petition.

In the counter affidavit filed on behalf of the respondents, it is alleged that the petitioner encroached into the adjacent vacant land. So far as the cost of the said excess is concerned it is stated that the then Vice Chairman having regard to the fact that the prevailing market value was Rs.2500/- to Rs.3000/- per square yard, fixed the cost at Rs.1700/- per square yard. Accordingly the petitioner was directed to pay the said amount under the impugned proceedings. However the counter affidavit is silent as to the plea of the petitioner that the respondents have accepted a sum of Rs.425/- only per square yard in respect of some other similarly situated allottees. More over nothing has been placed before this Court to show that the representations made by the petitioner were taken into consideration before passing the impugned order.

Having regard to the facts and circumstances, I am of the view that the matter requires re-consideration on the basis of the representations made by the petitioner and particularly taking into consideration the specific plea of the petitioner that the 1st respondent has collected only Rs.425/- from similarly situated allottees towards the costs of excess land.

Accordingly, the writ petition is allowed and the impugned order is set aside and the respondents are directed to re-consider the request of the petitioner and to pass appropriate orders in accordance with law. The petitioner is granted liberty to make a fresh representation together with supporting material if any, within a period of 4 weeks from the date of receipt of this order. On such representation being made, the respondents shall consider the same and pass appropriate orders in accordance with law within a period of 4 weeks thereafter. However, it is made clear that this Court has not expressed any opinion with regard to the claim of the petitioner with regard to the price of the excess land and it is open to the respondents to pass appropriate orders in accordance with law.

The writ petition is accordingly allowed with the above directions. No costs.

27-12-2004

Note:

Furnish CC by one week

(B/o)

rkk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this, Monday, the Twenty Seventh day of December, Two thousand and four.

To

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4. Two CD copies. copies.